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**SPECK & AANESTAD**

A PROFESSIONAL CORPORATION  
ATTORNEYS

Department of Water Resources

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August 23, 1999

Mr. Karl J. Dreher, Director  
Idaho Department of Water Resources  
1301 No. Orchard Street  
Statehouse Mail  
Boise ID 83701

RECEIVED

SEP 01 1999

Department of Water Resources  
Eastern Region

**Re: Measuring Devices on Warm Springs Creek Above  
Mackay Reservoir**

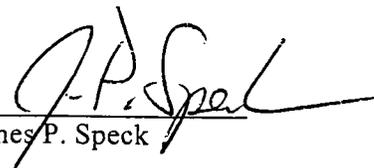
Dear Director Dreher:

My firm represents David R. Stoecklein together with various entities in which he is an owner, partner or manager (collectively "Stoecklein"). I am enclosing a copy of a March 4, 1991 Order issued by the Department regarding the installation and maintenance of headgates, controlling works and measuring devices within the Big Lost River Basin together with the cover letter from Mr. L. Glen Saxton by which copies of the Order were forwarded to affected water users. As you may know, many of the diversions from the two branches of Warm Springs Creek and other spring fed creeks above Mackay Reservoir do not comply with this Order. Stoecklein believes full and complete enforcement of the Order is necessary in order to properly administer the distribution of water rights from the sources. The implementation of the required headgates, control works and measuring devices should also minimize potential conflicts and disputes over excess diversions from these streams and potential adverse impacts on excellent fish habitat.

If there are any questions about this request, please call me as soon as possible. I am sending copies of this correspondence to Norm Young and Scott King who have been involved in previous discussions with my client about this issue. Thank you.

Sincerely yours,

SPECK & AANESTAD  
A Professional Corporation

By:   
James P. Speck

JPS:jal

Enclosures

cc: Client

Michael Creamer, Esq. (w/encls.)

Norman Semanko, Esq. (w/encls.)

Norman Young (w/encls.)

Scott King (w/encls.)



DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720 -(208) 327-7900

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FC Official Or Idaho

CECIL D. ANDRUS

GOVERNOR

R. KEITH HIGGINSON

DIRECTOR

March 4, 1991

CERTIFIED MAIL

Dear Water User:

RE: MEASURING DEVICE INSTALLATION ORDER

Enclosed is an order requiring you to install a headgate, controlling works and measuring device for your diversion(s) of surface water in the Big Lost River Drainage.

The need for the installation was determined from an on-site inventory of diversions by department personnel during the 1990 irrigation season. Initially, the diversions from the Big Lost River above Mackay Reservoir, and from streams located above Mackay Reservoir that are listed in the Utah Construction v. Abbott Decree (Abbott decree) as tributary to the Big Lost River, have been identified as needing headgates, controlling works and measuring devices to insure equitable distribution of the water.

The department is continuing the on-site inventory of diversions within the basin and may order the installation of the devices on additional diversions.

The Abbott decree also required all diversions of 50 cubic feet per second or more to install recording measuring devices. The reinstallation of these recording devices is not required at this time; however, the recording devices may be required as a part of the Snake River Basin Adjudication. The department is also reviewing the need for measuring devices and controlling works at the head of the "back" channel as described in the Abbott decree.

Some of the waterusers who receive the order may already have adequate measuring devices and control works. Others have none or have works in need of repair. If you are not sure whether the order applies to your diversion(s), you may request review of the matter by the department's regional office in Idaho Falls or by the watermaster. Unless specifically exempted from the requirements of the order, you are obligated to make the ordered installation to insure equitable distribution of water.

Sincerely,

*L. Glen Saxton*  
L. GLEN SAXTON, Chief  
Water Allocation Bureau

Encl: 1

c: IDWR - E. Region  
Doug Rosenkrance

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF INSTALLATION)  
OF HEADGATES, CONTROLLING )  
WORKS AND MEASURING DEVICES )  
\_\_\_\_\_ )

ORDER

FINDINGS OF FACT

1. The rights to the use of water of the Big Lost River and tributaries have been determined in the case of Utah Construction Company v. John F. Abbott et. al. in the District Court of the United States in and for the District of Idaho, Eastern Division.
2. The Utah Construction v. Abbott decree required all waterusers to install and maintain suitable headgates, controlling works and measuring devices at their points of diversion.
3. The use of water in the Big Lost River drainage has been thoroughly investigated in the recent claims taking and field review activity of the Snake River Basin adjudication. A number of diversions were determined to either not have a measuring device or to have an inadequate measuring device.
4. Suitable headgates, controlling works and measuring devices are required to ensure proper delivery of water to those entitled to its use.

CONCLUSIONS OF LAW

1. The Director of the Department of Water Resources (Director) has supervisory authority over operation of water districts pursuant to Title 42, Chapter 6 of the Idaho Code.
2. Title 42, Chapter 7 of the Idaho Code requires appropriators to install and maintain measuring devices above reservoirs and in streams to measure flows and empowers the Director of the Department of Water Resources to order the installation of such measuring devices.
3. Suitable headgates, controlling works and measuring devices are required at points of diversion to allow the watermaster of Water District No. 34 to properly deliver water to those entitled to its use.
4. The Director should order the installation and maintenance of suitable headgates, controlling works and measuring devices.

ORDER

IT IS, THEREFORE, HEREBY ORDERED, that waterusers within the Big Lost River basin as shown on the attached Certificate of Service are required to install and maintain suitable headgates, controlling works and measuring devices as determined by the Director.

IT IS, FURTHER HEREBY ORDERED, that the installation required by this order be complete on or before the start of the 1991 irrigation season unless extended for good cause by the Director.

Dated this 4<sup>th</sup> day of March, 1991.

*for*   
NORMAN C. YOUNG  
Administrator

CERTIFICATE OF MAILING

I Certify that on this the 5th day of March, 1991, a true and correct copy of the Order for installation of measuring equipment in the Big Lost River, was sent certified mail to:

Herb Whitworth  
Star Route  
Mackay, ID 83251

San Felipe Ranches  
P. O. Box 388  
Mackay, ID 83251

Lani & Dan Mulick  
Star Route  
Mackay, ID 83251

Morgan Harlodsens Land  
& Livestock  
Star Route  
Mackay, ID 83251

Gary & Edith Larter  
Star Route  
Mackay, ID 83251

Lola L. Coates  
Star Route  
Mackay, ID 83251

Milt Butler  
Mackay, ID 83251

Clinton & Esther Bitton  
Star Route  
Mackay, ID 83251

Bret L. Zollinger  
Star Route  
Mackay, ID 83251

Richard A. Smith  
Patricia A. Smith  
Star Route  
Mackay, ID 83251

Bette Jean Kent  
Pernecy D. Kent  
Marcia Lee Kent  
P. O. Box 365  
Mackay, ID 83251

Victor & Scott Johnson  
Churn Dasher Ranch  
Star Route  
Mackay, ID 83251

Broken River Ranch  
c/o Robert C. Hadley  
Star Route  
Mackay, ID 83251

Gordon & Ina Mae Harris  
Star Route  
Mackay, ID 83251

Brian Barsotti  
P. O. Box 2133  
Ketchum, ID 83340

David Stoecklein  
Shelley Stoecklein  
Mary J. Stoecklein  
Walter Stoecklein  
P. O. Box 856  
Ketchum, ID 83340

Marcelle J. Bright  
Raymond E. Bright  
Star Route  
Mackay, ID 83251

Roxanne R. Hale  
Star Route  
Mackay, ID 83251

Castle Rock Owners Assn.  
c/o Mark Brown  
P. O. Box 5618  
Ketchum, ID 83340

Harry J. Crawford  
Route 1, Box 8  
Darlington, ID 83231

William & Heidi Davis  
P. O. Box 156  
Seligman, AZ 86337

Terrence V. Donahue  
Carol J. Donahue  
Star Route  
Mackay, ID 83251

Arlene & Werner Erickson  
60 Trail Creek  
Pocatello, ID 83201

Melvin R. Freeman  
230 Wilson St.  
Midvale, UT 84047

Eugene H. Gabert  
P. O. Box 206  
Mackay, ID 83251

Debra Gifford  
Elizabeth Gifford  
c/o Kathie Vangunten  
2727 N. Holland-Sylvania  
Toledo, OH 43615

Goddard's Bar 13 Ranch  
Star Route  
Mackay, ID 83251

Warren Gifford, III  
Ohio Citizens Bank Trustee  
c/o Kathie Vangunten, Esq.  
2727 N. Holland-Sylvania  
Toledo, OH 43615

Marvin & Hilda Goddard  
Star Route  
Mackay, ID 83251

Delvin A. Hale  
Star Route  
Mackay, ID 83251

Diane Hatmaker  
Joan Johnson  
Star Route  
Mackay, ID 83251

Richard Hejmanowski  
3100 Burkhart Ln.  
Sebastopol, CA 95472

Rodney C. Hill  
911 E. Colorado Blvd.  
Suite 200  
Pasadena, CA 91106

Howard Ranches Corp.  
Box 111  
Whitebird, ID 83554

A. Dean Isom  
Mary M. Isom  
673 S. 1600 W.  
Provo, UT 84601

J & R Cattle, Co.  
Lehman Canyon Rd.  
Mackay, ID 83251

Joan Johnson  
Walter H. Johnson  
Star Route  
Mackay, ID 83251

Scott M. Karterman  
Dina C. Karterman  
P. O. Box 971  
Sun Valley, ID 83352

L & S Partnership  
P. O. Box B  
Twin Falls ID 83303

Sally Rae Johnson  
Star Route  
Mackay, ID 83251

James E. Lundy  
Rita M. Lundy  
P. O. Box 351  
Mackay, ID 83213

Earl McAfee  
Rt. 1 Box 32  
Arco, ID 83213

Pence Ranch Inc.  
P. O. Box 294  
Mackay, ID 83251

Lynn D. Reno  
Diane W. Reno  
7616 Bonanza Dr.  
Bakersfield, CA 93307

John Theodore Rosenkrance  
P. O. Box 15  
Mackay, ID 83251

Nancy Roskelley  
60 Trail Creek  
Pocatello, ID 83201

Wiley F. Smith  
Star Route  
Mackay, ID 83251

Carolyn Smith  
Star Route  
Mackay, ID 83251

Rodger Sorensen  
Mary Sorensen  
245 N. Hooper  
Soda Springs, ID 83276

State of Idaho  
Dept. of Fish and Game  
Box 25  
Boise, ID 83707

Logan E. Williams  
Linda C. Williams  
Star Route  
Mackay, ID 83251

Thomas P. Ziegler  
Helen M. Ziegler  
P. O. Box 2020  
Ketchum, ID 83340

Aslett Ranches  
P. O. Box B  
Twin Falls, ID 83303



RITA I. FLECK  
Secretary/Records Manager